

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE : CHAPTER 13
RASHIMA SOPHIA JOSEPH, : CASE NO. 17-57345-BEM
Debtor. :
: :
CAPITAL ONE AUTO FINANCE, A :
DIVISION OF CAPITAL ONE, N.A., :
: :
Movant, : CONTESTED MATTER
v. :
: :
RASHIMA SOPHIA JOSEPH, Debtor; :
and MARY IDA TOWNSON, Trustee, :
: :
Respondents. : :

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN

COMES NOW Capital One Auto Finance, a division of Capital One, N.A. (the "Movant"), a creditor of the referenced Debtor, and hereby moves this Court to deny confirmation of Debtor's Chapter 13 Plan. In support of its objection, the Movant shows the Court as follows:

1.

On April 24, 2017, Rashima Sophia Joseph ("Debtor") filed a *second* Voluntary Petition pursuant to 11 U.S.C. Section 1301 et seq., and said case is presently pending before this Court. Debtor filed a prior Chapter 13 case, Case 15-51845-BEM, on January 30, 2015 before dismissing it voluntarily on June 9, 2015. Debtor also received a Chapter 7 discharge in prior case 11-61537-PWB on July 26, 2011.

2.

Movant has a net claim in this case in the approximate amount of \$18,854.69 secured by a 2013 Dodge Journey (the "Collateral").

3.

Debtor's Chapter 13 Plan proposes to pay Movant's secured claim of \$18,854.69 at \$11,500.00 at 4.25% interest, with \$50.00 monthly pre-confirmation adequate protection payments and \$50.00 monthly post-confirmation payments until February 2018, when payments will increase to \$685.00.

4.

Movant should receive no less than retail value. The NADA value for the month this case was filed was \$12,300.00. See attached a copy of the referenced NADA value. After including the remaining \$782.50 value of the GAP Insurance and Service Warranty, the value adjusts to \$13,082.50. The plan must be amended to pay Movant the appropriate value. Debtor also claims a mileage of 75,000, resulting in a \$725.00 deduction. Evidence supporting any deductions must be provided in order for the value to reflect said deductions.

5.

Debtor's proposed interest rate of only 4.25% is not *Till* compliant. It provides a risk factor that is only 1/4 point above the *prime* rate. The prime rate of interest was 4.00% the month this case was filed. This current case is Debtor's second Chapter 13 case since receiving a Chapter 7 discharge and purchasing the Collateral, as well as Debtor's first Chapter 13 case for which she is eligible for a discharge. With each filing, the amount of the Movant's claim secured by the value of the Collateral decreases as the Collateral depreciates through use and over time. Given Debtor's bankruptcy history, *Till* suggests the appropriate risk factor in this case to be 9.75%. Accordingly, the plan cannot be confirmed without an interest rate of at least 9.75%.

6.

The Collateral is depreciating through use and over time and the Debtor is not adequately protecting Movant's interest in the Collateral. Debtor is not proposing an appropriate pre-confirmation adequate protection payments in violation of 11 U.S.C. Section 1326(a)(1)(C).

Debtor's plan proposes to pay \$50.00 to Movant until February 2018. During this time, Debtor's counsel is set to receive \$635.00 each month, or 87% of the monthly payment to the Trustee. This is bad faith. Movant should receive no less than \$345.00 per month retroactively for pre- and post-confirmation payments prior to any step increase.

Any increase in pre-confirmation adequate protection payments prior to Confirmation

needs to be made to have the effect of being retroactive to the filing date to pay Movant the correct amount of adequate protection (i.e., a lump sum amount that will be enough to make up for the difference in adequate protection previously disbursed by the Trustee and what Movant is entitled to).

7.

This case may not be feasible in contravention of 11 U.S.C. §1325(a)(6). Debtor bears the burden of proving all elements of confirmation, including the feasibility of this case and should be required to produce documents to support all income and expenses listed on Schedules I and J.

8.

The specific terms of the proposed plan itself are not proposed in good faith in violation of 11 U.S.C. §1325(a)(3).

9.

Movant has no proof of full coverage insurance on the Collateral and is therefore not adequately protected.

10.

Movant would like to ensure that their claim will be paid properly and the Debtor's attorney will not take up too much of the available money after confirmation. Movant would like to see the Trustee disburse funds immediately to the secured creditors in the case.

WHEREFORE, the Movant prays that its Objection to Confirmation of Chapter 13 Plan be inquired into and sustained and that it has such other and further relief as this Court deems just and proper.

This June 6, 2017.

The Law Office of
LEFKOFF, RUBIN, GLEASON & RUSSO, P.C.
Attorneys for Movant

By: /s/Philip L. Rubin
Philip L. Rubin
Georgia State Bar No. 618525

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N.A.D.A. Official Used Car Guide Vehicle Valuation

Print Date: June 1, 2017

Customer: Joseph, Rashima

File No.: COAF-1011498

Vehicle Description: 2013 DODGE TRUCK Journey-4 Cyl. Utility 4D SE 2WD

VIN: 3C4PDCABXDT584226

Base Values

Retail: \$ 12300.00 Wholesale/Trade-in: \$ 9950.00

Optional Equipment/Adjustments

Estimated Miles	75000	\$	-725.00
GAP Insurance			160.71
Service Warranty			1479.00

Total Adjusted N.A.D.A. Used Car Guide Values

Retail: \$ 13214.71 Retail/Wholesale Average: \$ 12039.71

Reference 04/2017 Southeastern, miles taken from SCH-B

Rough Trade-in	Average Trade-in	Clean Trade-in	Body Type	Model Number	MSRP	Weight	Clean Loan	Clean Retail
38075	39975	41550	Mega Cab Limited (4WD)	R5P	55995	7206	37400	45300
2014 RAM 3500 PICKUP-1 Ton-16-Dual Rear Wheels								
25775	27550	29000	Regular Cab Tradesman	R(2/P)A	30355	5982	26100	32700
27550	29350	30825	Regular Cab SLT	R(2/P)B	34415	6023	27750	34575
30025	31850	33350	Crew Cab Tradesman	R(2/P)(CG)	34210	6392	30025	37175
31800	33650	35175	Crew Cab SLT	R(2/P)(DH)	38825	6438	31675	39050
38200	40100	41675	Crew Cab Laramie	R(2/P)(E/J)	44595	6482	37525	45725
40200	42125	43700	Crew Cab Longhorn	R(2/P)(F/K)	50055	6556	39350	47800
41000	42925	44500	Crew Cab Limited	R(2/P)(F/K)	54130	6556	40050	48600
34775	36650	38200	Mega Cab SLT	R(2/P)I	40025	6611	34400	42175
41175	43100	44700	Mega Cab Laramie	R(2/P)M	45795	6670	40250	48825
43175	45125	46725	Mega Cab Longhorn	R(2/P)N	51255	6787	42075	50875
43975	45925	47525	Mega Cab Limited	R(2/P)N	54805	6787	42775	51700
27475	29275	30750	Reg Cab Tradesman (4WD)	R(3/R)A	33275	6343	27675	34500
29250	31075	32575	Regular Cab SLT (4WD)	R(3/R)B	37185	6369	29325	36400
32750	34600	36125	C-Cab Tradesman (4WD)	R(3/R)(CG)	37545	6626	32525	40025
34525	36400	37950	Crew Cab SLT (4WD)	R(3/R)(DH)	41660	6703	34175	41900
40200	42125	43700	Crew Cab Laramie (4WD)	R(3/R)(E/J)	47830	6752	39350	47800
43475	45425	47025	Crew Cab Longhorn (4WD)	R(3/R)(F/K)	53090	6841	42325	51175
44200	46150	47750	Crew Cab Limited (4WD)	R(3/R)(F/K)	57165	6841	42975	51925
38100	40000	41575	Mega Cab SLT (4WD)	R(3/R)L	42860	6875	37425	45625
43975	45925	47525	Mega Cab Laramie (4WD)	R(3/R)M	49030	6969	42775	51700
46050	48025	49650	Mega Cab Longhorn (4WD)	R(3/R)N	54290	7077	44700	53850
46725	48700	50325	Mega Cab Limited (4WD)	R(3/R)N	57840	7077	45300	54550
RAM PICKUP OPTIONS								

Add Bighorn/LoneStar Pkg. (SLT)	Trade-in	Loan	Retail	Add Leather (Std. Laramie, Longhorn, Limited)	Trade-in	Loan	Retail
Add Ram Box Storage	650	725			675	750	
Add 3.0L V6 T-Dsl Eng. (1500)	650	725					
Add 6.4L V8 (2500 Ex. PwrWgn)	2000	2225		Add Navigation System	725	825	
Add 6.7L I6 TD (Std. 3500)	1500	1675		(Std. Longhorn, Limited)			
Add A/A Wheels (SSV, Tradesman ex. Pwr Wgn, 2500/3500 SLT, 3500 Big Horn/Lone Star)	7000	7800		Add Power Seat (SLT)	325	375	
Add Air Suspension System (Std. 1500 Limited)	450	500		Add Power Sunroof	675	750	
Add Certified Pre-Owned (1500)	800	900		Ded 3.6L V6 Engine	1200	1200	
Add Certified Pre-Owned (2500)	1400			Ded 5.7L V8 Engine (3500)	7500	7500	
Add Certified Pre-Owned (3500)	1650			Ded 6.4L V8 Engine (3500)	5800	5800	
	2025			Ded W/out Automatic Trans.	800	800	
				Ded W/out Dual Rear Whls (3500)	500	500	
				Ded W/out Power Door Locks	200	200	
				Ded W/out Power Windows	225	225	

2013 JOURNEY-V6	Trade-in	Loan	Retail	Mileage Class: II				
10250	11475	12450	Utility 4D SE (4 Cyl.)	DCAB	18995	3818	11225	15150
10575	11800	12800	Utility 4D SXT (4 Cyl.)	DCBB	22995	3818	11525	15525
11100	12350	13350	Utility 4D SXT	DCBG	24595	4054	12025	16125
12375	13650	14675	Utility 4D Crew	DCDG	27995	4054	13225	17500
14475	15800	16875	Utility 4D R/T	DCEG	28995	4054	15200	19800
11900	13150	14175	Utility 4D SXT (AWD)	DDBG	26395	4238	12775	17000
14225	15550	16625	Utility 4D Crew (AWD)	DDDG	29795	4238	14975	19550
15150	16500	17575	Utility 4D R/T (AWD)	DDEG	30795	4238	15825	20550

Add Aluminum/Alloy Wheels (SE)	Trade-in	Loan	Retail	Add Power Sunroof	Trade-in	Loan	Retail
Add Certified Pre-Owned	375	425			600	675	
Add Infinity Stereo (Std. R/T)	950			Add Pwr Seat (Std. Crew, R/T)	275	325	
Add Leather Seats (Std. R/T)	350	400		Add Rear Entertainment System	650	725	
Add Navigation System	575	650		Ded W/out 3rd Row Seat	350	350	
	600	675		Ded W/out Rear Air Conditioning	350	350	

2013 CARAVAN-V6	Trade-in	Loan	Retail	Mileage Class: II				
8350	9500	10425	Ram Cargo Van	RGA	22465	4510	9400	13125
10325	11550	12525	Grand Caravan SE	DGB	19995	4510	11275	15375
10950	12175	13175	Grand Caravan SXT	DGC	26495	4510	11875	16100
11750	13000	14025	Grand Caravan Crew	DGD	28495	4510	12625	16975

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CERTIFICATE OF SERVICE

The undersigned, Philip L. Rubin, hereby certifies that I am, and at all times hereinafter mentioned, was more than 18 years of age, and that I served the OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN on the following parties 1) electronically, if allowed by and pursuant to the requirements of local rule, or 2) by depositing same in the United States Mail in properly addressed envelope(s) with adequate postage to all others, as follows:

Rashima Sophia Joseph
220 Bammel Westfield Road, Room 303
Houston, TX 77090

Karen King
215 Pryor Street
Atlanta, GA 30303

Mary Ida Townsend
Chapter 13 Trustee
191 Peachtree Street NE
Suite 2200
Atlanta, GA 30303

This June 6, 2017.

The Law Office of
LEFKOFF, RUBIN, GLEASON & RUSSO, P.C.
Attorneys for Movant

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